

25 JUL 2005

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In re Application of : DECISION ON
Fang et al :
Application No.: 10/537,011 :
PCT No.: PCT/US2003/038168 :
Int. Filing Date: 28 November 2003 :
Priority Date: 27 November 2002 : PETITION UNDER
Attorney's Docket No.: 013869-9004-US01 :
For: AMORPHOUS SELENIUM DETECTOR FOR :
AND OTHER IMAGE-GUIDED RADIOTHERAPY :
SYSTEMS : 37 CFR 1.10 (d)

This decision is in response to applicants' "CLARIFICATION OF THE DATE OF SUBMISSION OF THE NATIONAL STAGE ENTRY FOR PCT" filed on 11 July 2005, which is being treated as a petition under 37 CFR 1.10(d) requesting that the filing date of 28 May 2005 be changed to 27 May 2005 for the national stage submission for the above identified international application. No fee is required for this petition.

BACKGROUND

On 28 November 2003, the above international application was filed and claims an earliest priority date of 27 November 2002.

On 27 May 2005, petitioner purportedly filed a transmittal letter for entry into the national stage in the United States. However, the USPTO granted a filing date of 28 May 2005 as shown by the "date-in" on the "Express Mail" mailing label.

On 11 July 2005, petitioner filed a petition under 37 CFR 1.10(d) requesting that the application be granted the correct the filing date for the transmittal letter of May 27, 2005 under 37 CFR 1.10(d) for the receipt of the transmittal letter.

DISCUSSION

37 CFR 1.10(d) provides:

Where the "date in" on the Express Mail mailing label is believed to be in error, applicants may file a petition under 37 CFR 1.10(d) to have the correspondence accorded a filing date as of the date of the correspondence is shown to have been deposited with the USPS. The requirements under 37 CFR 1.10(d) are:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and

(3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

Petitioner has satisfied items (1)-(3) above.

The petition was filed promptly. 37 CFR 1.10(d)(1). In addition, a review of the application papers reveals that "Express Mail" Label No. EV635801958US was placed on the certification of mailing. CFR 1.10(d)(2).

Finally, the showing under 37 CFR 1.10(d)(3) is also satisfactory. Petitioner has provided evidence from the USPS, i.e., a copy of the USPS' Express Mail Information Database website "Track & Confirm" service indicates a date and time package of acceptance of USPS on May 27, 2005 at 6:48 pm in the Milwaukee for the "Express Mail" label No. EV635801958US, and in addition the USPTO returned stamped postcard also indicates a date of receipt of the transmittal letter of May 27, 2005.


Accordingly, the requirements under 37 CFR 1.10(d) have been satisfied.

CONCLUSION

For the above reasons, the petition under 37 CFR 1.10(d) is **GRANTED**.

The National Stage papers were received by the USPTO on 27 May 2005.

The application is being returned to the United States Designated/Elected Office (DO/EO/US) for processing in accordance with this decision.


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